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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,218	01/16/2001	Jaime Vargas	032405-042	7487
33109	7590	04/08/2004	EXAMINER	
CARDICA, INC. 900 SAGINAW DRIVE REDWOOD CITY, CA 94063			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	18

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Offic Action Summary**

Application No.

09/764,218

Applicant(s)

VARGAS ET AL.

Examiner

Victor X Nguyen

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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 07 January 2004.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,10-16 and 18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,10-16 and 18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Applicant's Appeal Brief filed 1/7/2004, with respect to claims 1, 10-16 and 18 are acknowledged. Therefore, the finality of the previous Office Action has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Shennib et al. (6,251,116).

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13, line 2, it is unclear what is meant by "the incision tensioners are clips" and how it relates to a method for grafting a graft vessel to a target vessel **by removing** the incision tensioners from the incision after the grafting while the applicant elected Invention I of Species VII , Figs. 11-13 in Paper. No 10. Figs. 11-13 show the incision tensioners which are clips that **can not be removed** from the incision after the grafting. Clarification is requested.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10-11 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Shennib et al (U.S. 6,251,116).

Shennib et al disclose in figs. 2, 4, col. 2, lines 60-67 and col. 3, lines 1-47, a method for grafting a graft vessel to a target vessel during an anastomosis procedure having the limitations of claims 1, 10-11 and 18, including: the incision is formed in the target vessel (9, 10). Comparing Figures 4a-4c, it is clearly shown that the incision is tensioning with the incision tensioners. By grafting the graft vessel to the target vessel while the incision is tensioned; and wherein the incision tensioners are removed from the incision after the grafting. As noted that the incision tensioners of Shennib et al are made of any suitable biocompatible material including bioresorbable and biodegradable material (see col. 3, lines 14-16). By definition, i.e., biodegradable material is capable of being decomposed by biological agents. Therefore, the incision tensioners of Shennib are capable of removing from the incision after the grafting.

As to claim 12, the method step, “the predetermined force...,” is not given any patentable weight since the step fails to recite any structure limitations. However, the Shennib device is capable of being predetermined force in the aforementioned manner.

As to claims 13-16 are unclear what is meant by “the incision tensioners are clips” and how it relates to a method for grafting a graft vessel to a target vessel **by removing** the incision tensioners from the incision after the grafting while the applicant elected Invention I of Species VII , Figs. 11-13 in Paper. No 10. Figs. 11-13 show the incision

tensioners which are clips that **can not be removed** from the incision after the grafting.

Clarification is requested.

*Conclusion*

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn VN  
March 31, 2004



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